IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Bail Appl..No. 4740 of 2007()

CRIME NO.355/07 OF GANDHI NAGAR POLICE STATION, KOTTAYAM
CRMP.1679/2007 of DISTRICT COURT, KOTTAYAM

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PETITIONERS/ACCUSED 1 & 4 :

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1. BENNY MANI, S/O.MANI,
AGED 31 YEARS, MALIYACKAL HOUSE,
PERUMPAYIKKATTUSSERI, MANNANAM KARA, KOTTAYAM.

2. JIJIMON MATHEW, S/O.MATHEW,
PATTATHANAM HOUSE, MANNANAM KARA, KOTTAYAM.

BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4740 of 2007

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Dated this the 8th day of August, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 4 in the crime registered, inter alia, under Sections 324 and 308 r/w. 149 I.P.C. Their application for anticipatory bail was dismissed by the learned Sessions Judge by Annex.I order.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The alleged incident was not at all a pre-planned one as alleged by the prosecution. The dispute arose while two vehicles were proceeding along the road in respect of an attempt of overtaking one of the vehicle and the alleged incident occurred in the heat of passion. The allegation under Section 308 I.P.C. has been included with the deliberate intention of vexing and harassing the petitioners. The petitioners have no criminal antecedents. The learned counsel further relies on the fact that the precise injury suffered cannot be termed as serious or grievous. In these circumstances anticipatory bail may be granted to the petitioners, it is prayed.

3. The application is opposed by the learned Prosecutor. He submits that the allegations show and the materials collected so far indicate the truth of those allegations, that the accused persons, in furtherance of their design had way laid the vehicle in which the victim was travelling and had unleashed an attack with dangerous weapons. It is further pointed out that the accused persons belong to a group having questionable antecedents. Two of the accused in the group have several criminal cases to their credit. In these circumstances the learned Prosecutor submits that notwithstanding the fact that the petitioners are not shown to have any criminal antecedents and notwithstanding the fact that the injury suffered is not serious or grievous, this court may take into consideration the facts revealed in the investigation conducted. The petitioners may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. I am of the opinion that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate

having jurisdiction and then seek regular bail in the ordinary course. I find no features in this case to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioners.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

Sd/-

(R. BASANT)
Judge

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P.A. to Judge